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Via [redacted]

10 December 1948

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Contract [redacted]

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1. Contract [redacted] has been reviewed for the propriety of its legal form and is being returned with the following observations and comments.

2. The contract provides for certain low speed telegraphy service to be furnished [redacted]

[redacted] It states in part:

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"This agreement shall be for a term of ONE year, and shall continue in force thereafter unless and until determined at the end of the said term or at any time thereafter by either party giving to the other, one calendar month's previous notice in writing."

3. Revised Statutes, Section 3732; (Title 41, U.S.C.A. Section 11) provides that any contract made on behalf of the United States must be authorized by law or made under an appropriation "adequate to its fulfillment" and shall not extend beyond the current year. The "current year" of the statute has been construed to mean the current fiscal year, and a contract is binding upon the Government only to the extent of the current appropriation of that fiscal year. In so far as certain metered services, such as gas, electricity, water, etc., are concerned, specific statutory authority was given to permit extension beyond the end of the fiscal year and allow the entire payment as a charge against the appropriation or allotment current at the end of the whole period. The Act was later amended to include telephone service (Act of 27 April 1937, 50 Stat. 119, as amended by Act of 26 April 1939, Public No. 59, 53 Stat. 624); but the Comptroller General declined to accept teletype service as a type of telephone service which would be excepted by the statute from the general rule (opinion dated 19 June 1939 A-3996). In view of the fact that the service is supplied by a governmental monopoly, there does not appear to be any necessity for new agreements or annual renewals except as required to cover changes in rates or services. Even so, it is not believed that the term of the original contract should extend beyond the termination of fiscal year 1948. Advertising and the formalities of renewal can be excused when they serve no useful purpose, but the limitation to a current fiscal appropriation is a separate and distinct requirement which must be observed. In an opinion, dated 29 April 1936 (A-65231), the Comptroller General approved an agreement for electrical service to be

provided "until further notice", and stated that there was no obligation imposed on the Government except to the extent of actual use and for that reason the agreement was not in contravention with Sections 3679 and 3732, Revised Statutes. The present agreement is not comparable, however, since it is for a definite duration on one year, and payment is to be made by annual rent, regardless of actual use.

4. It is therefore suggested that the agreement be modified either to stipulate a monthly period subject to the automatic renewal already provided, or to extend only to the end of fiscal year 1948 subject to automatic renewal on an annual basis. The first could be accomplished by the insertion of the word "month" in lieu of "year", and the second might be effected by the appropriate insertion of words to read:

"This Agreement shall be for a term expiring on 30 June 1948, and shall continue in force thereafter until the termination of any successive fiscal year on 30 June unless and until determined at any time by either party giving to the other one calendar month's previous notice in writing."

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cc:

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